



Council Report

To: The Honorable Mayor and City Council

From: Tanya Wilson-Sejour, Planning Manager

Date: January 28, 2014

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER AND THE CITY ATTORNEY TO NEGOTIATE AND EXECUTE A CONSENT AND SUBORDINATION AGREEMENT, IN SUBSTANTIALLY THE ATTACHED FORM, BETWEEN THE CITY OF NORTH MIAMI, RUDG-LHHA BEL HOUSE, LLC AND BANKUNITED, NA, ALLOWING FOR THE SUBORDINATION OF A MULTI-FAMILY RENTAL REHABILITATION LOAN; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

RECOMMENDATION

It is recommended that the Mayor & City Council approve the proposed resolution authorizing the City Manager and City Attorney to amend the existing Multi Family Rental Rehabilitation Loan Program Agreement effectuated by Resolution 2006-76 between the City and RUDG-LHHA Bel House LLC in order to reflect the change in the first mortgage holder from the existing lender, Gibraltar Private Bank & Trust Company with a new lender BankUnited and to continue to subordinate the City's existing \$550,000 loan in third position behind Bank United and the Little Haiti Housing Association (the first and second mortgage holder).

OVERVIEW OF PURPOSE & INTENT

The applicant RUDG-LHHA BEL HOUSE, LLC is requesting an amendment to the existing Multi Family Rental Rehabilitation Loan Program Agreement in order to incorporate the following changes:

The applicant RUDG-LHHA BEL HOUSE, LLC desires to refinance its first mortgage (in the amount of \$1.4 million) from Gibraltar Bank by taking out a new loan with Bank United in the amount of \$1.7 million (primarily for site renovations on Bell House West) as well as obtain a line of credit from BankUnited in the amount of \$500,000.

RUDG-LHHA BEL HOUSE, LLC will maintain its second mortgage position with Little Haiti Housing Association Inc with its existing loan in the amount of \$3,379,761.

The existing mortgage held with the City of North Miami in the amount of \$550,000 shall continue to subordinate the two previous first and second mortgages and remain in third place (Payment on the loan will be due Aug 2021).

BACKGROUND

The City entered into a Multi Family Rental Rehabilitation Loan Program Agreement with Bel House Apartments, L.L.P (Borrower) on July 10, 2006 which was subsequently transferred to RUDG-LHHA Bel House, LLC in December 2010. The City provided a loan utilizing Community Development Block Grant (CDBG) funds in the principal amount of five hundred and fifty thousand and 00/100 dollars (\$550,000.00) (the "Loan") to be used by Borrower for debt reduction and construction of the improvement of certain real property consisting of two buildings with a total of 65 units located at 13925 and 13990 NE 6th Avenue in North Miami.

The loan was designed to be used to (1) pay down a portion of the mortgages on the property by the amount of \$500,000 and (2) provide \$50,000 as a portion of the funds needed to effectuate improvements to the Property to meet applicable building codes and improve the living conditions of the tenants. The Agreement provided for at least fifty-one percent (51 %) or 33 of the units to be reserved to serve low and moderate income households with a long term affordability period of 15 years.

The Loan term is for fifteen years with a zero percent (0%) interest rate and becomes due and **payable on August 1st, 2021**. The Properties consist of one two story and one three story residential apartment buildings consisting of a total of sixty five (65) residential units with a mix of efficiencies, one and two-bedroom units. The buildings are located on NE 6th Avenue as follows: Bel House Apartments (13925 NE 6th Avenue) is located on the East side of NE 6th Avenue from NE 139th Street to NE 140th Street and Bel House West Apartments (13990 NE 6th Avenue) is located at the southwest corner.

The prior Agreement provided a completion of the repairs on the property to be Three Hundred (300) days from September 2006. The Borrower sought and obtained two amendments to the Agreement to extend the completion dates, to allow the improvements to be completed on the

Property. To date, the eastern building has been renovated. However additional repairs still remain on the western building. The new mortgage amount is intended for improvements and rehabilitation of the western property located at Bel House West Apartments (13990 NE 6th Avenue).

CONCLUSION

Staff believes the proposed request is necessary in that it allows RUDG-LHHA the opportunity to obtain the additional funding needed to complete renovations on the subject property. If approved, the applicant/owner will be able to carry out the desired property improvements and further the City's objectives to provide decent affordable housing to North Miami residents. As such staff recommends approval of the proposed resolution subject to the following conditions.

1. That RUDG-LHHA files the necessary documents with the office of the City Attorney in order to finalize the amendment of the agreement and establish a project completion date within 30 days of the loan closing.
2. That the applicant records a restrictive covenant on both properties to ensure that at least fifty-one percent (51 %) of the units are reserved for low and moderate income households with a long term affordability period of no less than 15 years.

Attachments

1. Resolution.
2. Multi Family Rental Rehabilitation Loan Program Agreement
3. Letter of Intent

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER AND THE CITY ATTORNEY TO NEGOTIATE AND EXECUTE A CONSENT AND SUBORDINATION AGREEMENT, IN SUBSTANTIALLY THE ATTACHED FORM, BETWEEN THE CITY OF NORTH MIAMI, RUDG-LHHA BEL HOUSE, LLC AND BANKUNITED, NA, ALLOWING FOR THE SUBORDINATION OF A MULTI-FAMILY RENTAL REHABILITATION LOAN; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

WHEREAS, the City of North Miami ("City") and Bel House Apartments, LLP entered into a Multi-Family Rental Rehabilitation Loan Program Agreement with the City on July 10, 2006 as authorized by Resolution No. R-2006-76 passed on June 27, 2006; and

WHEREAS, in accordance with Resolution No. R-2010-132 passed on November 9, 2010, RUDG-LHHA Bel House, LLC assumed all the obligations remaining under the Multi-Family Rental Rehabilitation Loan in the amount of Five Hundred Fifty Thousand Dollars (\$550,000.00); and

WHEREAS, the funds are secured by a mortgage recorded on July 29, 2006 at Official Record Book 24768, Page Numbers 3676-3686; and

WHEREAS, the City's mortgage is currently subordinate to a first mortgage in the amount of One Million Four Hundred Thousand Dollars (\$1,400,000.00) from Gibraltar Bank and a second mortgage in the amount of Three Million Three Hundred Seventy-Nine Thousand Seven Hundred Sixty-One Dollars (\$3,379,761.00) from Little Haiti Housing Association, Inc.; and

WHEREAS, RUDG-LHHA Bel House, LLC has obtained financing with BankUnited, NA, for the One Million Seven Hundred Thousand Dollars (\$1,700,000.00) debt as well as an additional Five Hundred Thousand Dollars (\$500,000.00) to be used toward improvements at the property which is contingent on the City's subordination of its Multi-Family Rental Rehabilitation Loan; and

WHEREAS, The mortgage of \$550,000.00 held by the City as identified in the existing agreement dated December 17, 2010 subordinates the City in third place to the two (2) prior mortgages described above as the first and second mortgage holders.

WHEREAS, RUDG-LHHA Bel House, LLC is restructuring its membership to reflect that the two (2) current membership entities: LHHA-Bel House, LLC and Bel House Manager, LLC will be assigning their interests in the organization to Little Haiti Housing Association, Inc.; and

WHEREAS, the Mayor and City Council find it is in the best interest of the City and its residents to enter into a Consent and Subordination Agreement for this purpose.

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. **Authority of City Manager and City Attorney.** The Mayor and City Council of the City of North Miami, Florida, hereby authorize the City Manager and the City Attorney to negotiate and execute a Consent and Subordination Agreement between the City of North Miami, RUDG-LHHA Bel House, LLC and BankUnited, NA, in the form attached as Exhibit "A".

Section 2. **Authorization of City Manager.** The Mayor and City Council of the City of North Miami, Florida, hereby authorize the City Manager to do all things necessary to effectuate the terms of the Consent and Subordination Agreement.

Section 3. **Effective Date.** This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, this _____ day of _____, 2014.

LUCIE M. TONDREAU
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: _____

Seconded by: _____

Vote:

Mayor Lucie M. Tondreau	_____ (Yes)	_____ (No)
Vice Mayor Scott Galvin	_____ (Yes)	_____ (No)
Councilperson Carol Keys, Esq.	_____ (Yes)	_____ (No)
Councilperson Philippe Bien-Aime	_____ (Yes)	_____ (No)
Councilperson Marie Erlande Steril	_____ (Yes)	_____ (No)

**RECORDING REQUESTED BY AND WHEN
RECORDED MAIL TO:**

Legal Services of Greater Miami, Inc.
Attention: Shahrzad Emami, Esq.
3000 Biscayne Blvd.
Suite 500
Miami, Florida 33137

*THIS SPACE FOR RECORDER'S USE
ONLY*

CONSENT AND SUBORDINATION AGREEMENT

This Consent and Subordination Agreement (this "Agreement") is entered into as of the _____ day of _____, 2014 by and among **THE CITY OF NORTH MIAMI**, a municipal corporation of the State of Florida ("Subordinate Creditor"), **RUDG-LHHA Bel House, LLC** a Florida limited liability company ("Owner"), and **BANKUNITED, N.A.** ("Senior Lender").

RECITALS

Owner is the owner of the real property described on Exhibit A attached to this Agreement (the "Property").

Senior Lender is the owner and holder of a promissory note (the "Senior Note") in the original principal amount of \$2,200,000.00 executed by Owner as Maker. The Senior Note is secured by a deed of trust, security agreement, assignment of leases and rents and fixture filing or by a mortgage, security agreement, assignment of leases and rents and fixture filing or similar instrument (as applicable, the "Senior Security Instrument") executed by Owner in favor of Senior Lender, all executed as of even date herewith, and encumbering the Property and the improvements, fixtures, equipment, and other personal property described in the Senior Security Instrument (collectively the "Property"). Certain of the security interests granted in the Senior Security Instrument are perfected by the filing of a UCC financing statement (the "Senior Financing Statement") showing Owner as debtor and Senior Lender as secured party. The Senior Note, the Senior Security Instrument, and the Senior Financing Statement are referred to collectively as the "Senior Loan Documents".

It is understood by the parties hereto that Senior Lender would not make the loan secured by the Senior Security Instrument without this Agreement.

Subordinate Creditor is the owner and holder of a mortgage or other security instrument (the "Subordinate Security Instrument") encumbering the Property recorded in Official Records

Book 24768 Page Numbers 3676-3686 in the Public Records of Miami Dade County Florida. The Subordinate Security Instrument secures a promissory note in the principal amount of \$550,000.00 from Bel House Apartments LLP as maker to Subordinate Creditor as payee (the "Subordinate Note"). The Subordinate Security Instrument, the Subordinate Note and all other documents executed in favor of the Subordinate Creditor are herein referred to as the "Subordinate Loan Documents."

AGREEMENT

In consideration of the mutual benefits to Subordinate Creditor, Senior Lender, and Owner, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Senior Lender to make its respective loan, Subordinate Creditor, Senior Lender, and Owner hereby irrevocably agree as follows:

1. **Subordination and Consent.** Subordinate Creditor unconditionally subordinates the lien of, and all other rights under, the Subordinate Security Instrument and any and all related UCC financing statements and fixture filings filed with respect to the Property to the lien of, and all other rights under, the Senior Loan Documents and all advances or charges made or accruing thereunder, including any and all extensions, modifications and renewals thereof, additional advances thereunder (whether or not Senior Lender is obligated or committed to make such advances) and capitalization of interest, costs and fees in connection with any of the foregoing. Senior Lender agrees, notwithstanding the prohibition against inferior liens on the Property contained in the Senior Loan Documents and subject to the provisions of this Agreement, to permit Subordinate Creditor's mortgage lien against the Property (which is subordinate in all respects to the lien of the Senior Security Instrument, and the other Senior Loan Documents) to secure Borrower's obligation to repay the Subordinate Note. Such permission is subject in all respects to the terms and conditions of this Agreement.

2. **Foreclosure of Subordinate Security Instrument.** Subordinate Creditor agrees that in any action taken to foreclose the Subordinate Security Instrument, no tenant of any portion of the Property will be named as a party defendant, nor will any other action be taken that would terminate any tenancy of the Property without the prior written consent of Senior Lender.

3. **Amount of Subordinate Debt.** Subordinate Creditor and Owner represent and warrant to Senior Lender that the total principal amount of the indebtedness secured by the Subordinate Security Instrument is \$550,000.00.

4. **Modification of Senior and Subordinate Loan Documents; Certain Waivers.** Senior Lender and Owner may freely enter into extensions, modifications and renewals of the Senior Loan Documents without notice to or consent of Subordinate Creditor and no such extension, modification or renewal shall defeat the subordination made herein in whole or in part. Subordinate Creditor and Owner may not enter into extensions, modifications and renewals of the Subordinate Loan Documents without notice to or consent of the Senior Lender. Subordinate Creditor waives any right, privilege or defense Subordinate Creditor might otherwise have based upon any impairment of Subordinate Creditor's security or recourse and agrees that Senior Lender

may waive recourse on, and release or fail to perfect security for, the obligations evidenced by the Senior Loan Documents without notice to or consent of Subordinate Creditor, and without defeating the subordination made herein in whole or in part. Subordinate Creditor and Senior Lender each have adequate means to obtain information from Owner on a continuing basis concerning the financial condition of Owner and the Property and concerning Owner's ability to perform Owner's obligations to Subordinate Creditor and Senior Lender. Subordinate Creditor and Senior Lender each assume the responsibility for being and keeping informed of the financial condition of Owner and of all circumstances bearing upon the risk of nonpayment of the obligations secured by the Subordinate Security Instrument, and the Senior Security Instruments. Subordinate Creditor and Senior Lender each hereby waive and relinquish any duty on the part of the other to disclose any matter, fact or thing relating to the business, operations or condition of Owner or to the Property now or hereafter known by Senior Lender or Subordinate Creditor.

5. **Lien Priorities; Lien Subordination.** Owner, Subordinate Creditor, and Senior Lender acknowledge and agree, notwithstanding the actual order of recording that the relative priority of the following instruments and related liens and encumbrances shall be in the order set forth below, and Subordinate Creditor and Senior Lender consents to the Owner's encumbrance of the Property by such liens and encumbrances:

a) first, the mortgage securing the Senior Loan;

b) second, the mortgage securing the loan from Little Haiti Housing Association, Inc. to Owner in the principal amount of \$3,379,761.00 dated as of December 27, 2010 and recorded in Official Records Book 27536 Page 3790 in the public records of Miami-Dade County Florida;

c) third, the mortgage securing the Subordinate Creditor's Loan.

d) fourth, the mortgage securing the loan from Little Haiti Housing Association, Inc. to Owner in the principal amount of \$737,813.36 dated as of January 31, 2013 and recorded in Official Records Book 28471 Page 1925 in the public records of Miami-Dade County Florida.

Subordinate Creditor, Senior Lender, and Little Haiti Housing Association, Inc. hereby subordinates and subjects the liens and encumbrances created under its respective loan documents to the liens and encumbrances created under all loans and loan documents senior in priority (as set forth above) to its loan documents. Subordinate Creditor, Senior Lender, and Little Haiti Housing Association, Inc. agree to execute, acknowledge (if required) and deliver to any other lender a subordination agreement, an estoppel certificate and/or such other and further documents in a form reasonably satisfactory to such lender to confirm the subordination reflected in the preceding provisions of this paragraph.

6. **Amendment.** This Agreement may be amended only by a written agreement duly executed by the parties hereto.

7. **Legal Costs.** In the event of any litigation, arbitration or other legal proceeding in which any party (including but not limited to Senior Lender) seeks to enforce its rights under this Agreement, each party shall be responsible for its own legal costs.

8. **Entire Agreement.** This Agreement sets forth the final expression of the entire agreement of the parties hereto with regard to the subordination provided for herein and shall supersede and cancel any prior agreements as to such subordination, including but not limited to those provisions, if any, contained in the Subordinate Security Instrument, which provide for the subordination of the lien or charge thereof to a mortgage or other security instrument thereafter executed.

9. **Binding Effect.** The heirs, administrators, assigns, and successors-in-interest of Subordinate Creditor and Senior Lender shall be bound by this Agreement.

10. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the state where the Property is located.

11. **Duplicate Originals; Counterparts.** This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

DATED as of the date first set forth above.

<<SIGNATURES ON FOLLOWING PAGES>>

SUBORDINATE CREDITOR:

CITY OF NORTH MIAMI

By: _____

Name:

Title:

STATE OF FLORIDA)
) ss:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____
2014 by _____, as _____, on behalf of the
City of North Miami, a municipal corporation of the State of Florida.

Personally Known ☐
Produced Identification ☐ Type of Identification:
☐ *Did* ☐ *Did Not* Take an Oath

NOTARY PUBLIC, STATE OF
FLORIDA AT LARGE
NOTARY STAMP

SENIOR LENDER:

BANKUNITED, N.A.

By: _____

Name:

Title:

STATE OF FLORIDA)
) ss:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of ____ 2014 by
_____, as _____, on behalf of
_____ a Florida not-for-profit corporation.

Personally Known ☐
Produced Identification ☐ Type of Identification:
☐ *Did* ☐ *Did Not* Take an Oath

NOTARY PUBLIC, STATE OF
FLORIDA AT LARGE

NOTARY STAMP

OWNER:

RUDG-LHHA Bel House, LLC, a Florida limited liability company

By: Little Haiti Housing Association, Inc.

By: _____

Print Name: _____

Title: _____

STATE OF FLORIDA)
) ss:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____ 2014
by _____, as _____, on behalf
of _____, a Florida limited liability company.

Personally Known ☐
Produced Identification ☐ Type of Identification:
☐ *Did* ☐ *Did Not* Take an Oath

NOTARY PUBLIC, STATE OF
FLORIDA AT LARGE

NOTARY STAMP

EXHIBIT A

Lots 7 and 8, Block 8, RUCKS PARK, according to the Plat thereof, recorded in Plat Book 44 at Page 97, of the Public Records of Miami-Dade County, Florida.

06-2219-011-1130

and

Lots 1, 2, 7 and 8, in Block 10, of RUCKS PARK, according to the Plat thereof, as recorded in Plat Book 44, at Page 97, of the Public Records of Miami Dade County, Florida.

06-2219-011-1280



HAITIAN AMERICAN COMMUNITY DEVELOPMENT CORPORATION

"Building Homes, Building Lives, Building Community"

January 8, 2014

Tanya Wilson-Sejour, AICP
Planning Manager,
Community Planning & Development Department
City of North Miami, 12400 NE 8th Avenue
North Miami, FL 33161

RE: Subordination of City of North Miami Loan of \$550,000

Dear Ms. Wilson-Sejour:

We are pleased to provide the additional information to have our request for subordination of the \$550,000 City Loan on the agenda for the January 14 City Council meeting. Below is the detailed information:

Owner - same owner — RUDG-LHHA Bel House LLC — whose members are: Bel House Manager LLC and LHHA BEL House LLC. Only Bel House Manager LLC is withdrawing from the RUDG-LLHA Bel House LLC

Existing Mortgage Holder - Gibraltar is the existing Mortgage Holder which is being taken out through the refinancing.

New Mortgage Holder - Bank United

Existing Loan - \$1,400,000 million

Total Refinance Amount: \$1,700,000 plus \$500,000 in a line of credit.

Purpose of Refinancing: Take out the Gibraltar Loan and cash out of approximately \$300,000 to pay for phase III of the project rehabilitation (\$150,000) and pulling out the balance of \$150,000 as program income to initiate new project(\$4 million in NSP-2 was placed in the project).

Affordability: 25% at 50% and below; 50% at 80% and below and 25% at 120% and below.

Number of units: 65

Phase III: Phase III covers new AC unit in Bel House West; bathroom upgrade, and resurfacing of walkway due to water retention.

Justification: These items will bring Bel House West to the same level as Bel House East. If we were to miss the meeting, we would lose the opportunity to close on the loan that will give us the additional funding to these repairs. Lender has been patient but has not indicated whether or not they will extend the commitment letter if we were to postpone for next month.

Sincerely,


Lynda Charles